

[Name and Job Title]

[Council name]

[Address Fields]

17<sup>th</sup> November 2011

Dear [Designation Surname],

**Potential legal challenges to statutory commissioning of homecare**

We write to draw your attention to the recent legal challenges to local authorities brought by social care providers concerned about the downward pressure on fees paid to the independent and voluntary sector. This letter requests a formal response to the issues raised, as described below.

We note in particular:

- Sefton County Council were found to have acted unlawfully when freezing rates paid to providers and failing to have regard to the real cost of care it purchased.
- Pembrokeshire County Council received an adverse judgement from the High Court over its fee-setting processes.
- Staffordshire County Council averted a High Court challenge by agreeing to a full review of care fees in the residential sector.

While the first successful challenges have been mounted by residential providers, we are taking this opportunity to confirm the increasing appetite among homecare providers to mount similar actions.

You will no doubt appreciate that legal challenges carry considerable financial and resource implications for both parties, long before they reach court. We therefore urge your authority to give careful consideration to the recent judgments as you consider the council's social care budget for 2012-13 and the impact of any recent or forthcoming cost reduction measures that will affect homecare providers.

Working for *QUALITY* in *HOME CARE*



The need to provide safe, dignified and sustainable care in people's own homes is an objective shared by providers and councils alike. UKHCA represents businesses in your local area that deliver such services and employ a workforce of your local residents. We invite you, as the Chief Executive, to provide a brief summary of the authority's current position and, where appropriate, any remedial action being taken, on the following six issues, below. We will share this response with our members and other stakeholders.

1. Whether the authority has recently undertaken an accurate assessment of the legitimate, current and future costs faced by homecare providers, and whether the authority operates a fee negotiation arrangement that recognises these costs in full.
2. Whether, either: the authority has breached existing clauses in contracts, particularly in relation to inflationary up-lifts; or: where contracts currently provide the authority with a unilateral right to vary or hold contract prices at existing levels, which has been exercised.
3. Whether the authority has engaged in reassessment of homecare packages that have resulted in a general reduction in visit times; or has adopted a per-minute billing system which has reduced providers' income, without a comparable reduction in providers' operating costs.
4. Whether the authority's contracting arrangements have added additional costs for providers (for example the introduction of electronic call monitoring) which have not been reflected by an increase in the contract price.
5. Whether service users receiving direct payments can realistically buy regulated care services, if they choose to, that will meet their assessed needs.
6. The council's view on whether contract terms and prices could be found by the courts to have created a reduction in the quality of service provision, which may put citizens who use care services at risk.

To assist meeting our member organisations' expectations, it would be extremely helpful if your formal response could be received by post at this office no later than Friday 9<sup>th</sup> December 2011, or by e-mail to [policy@ukhca.co.uk](mailto:policy@ukhca.co.uk) on the same day.

Our members appreciate the efforts of councils that work productively with the sector, and UKHCA recognises the financial challenges currently faced by authorities. However, the impact of public spending cuts on homecare providers has clearly reached the point where legal challenges have become a genuine prospect.

It is deeply regrettable that tensions between commissioners and providers have become so strained that this Association feels obliged to raise this matter formally. However, our responsibility to our member organisations as the largest representative association for the homecare sector makes this move necessary.

Yours sincerely,



**Bridget Warr**  
Chief Executive